

Gary L. Hoffman, Esq. (SBN 121641)
 Tracy L. Hughes, Esq. (SBN 232283)
 Koeller, Nebeker, Carlson & Haluck, LLP
 3 Park Plaza, Suite 1500
 Irvine, CA 92614-8558
 949-864-3400; fax: 949-864-9000

Attorneys for Defendant,
 SAN DIEGO UNIFIED PORT DISTRICT

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

TRAYLOR BROS., INC., an Indiana
 Corporation doing business as TRAYLOR
 PACIFIC,

Plaintiff,

v.

SAN DIEGO UNIFIED PORT DISTRICT, a
 California public corporation,

Defendant.

Case No. 08 CV 1019L JMA

**ANSWER OF DEFENDANT SAN
 DIEGO UNIFIED PORT DISTRICT TO
 PLAINTIFF'S FIRST AMENDED
 COMPLAINT**

Courtroom: 11
 District Judge: Hon. M. James Lorenz
 Magistrate Judge: Hon. Jan M. Adler

COMES NOW Defendant, SAN DIEGO UNIFIED PORT DISTRICT (hereinafter referred to as "DEFENDANT") and for its answer to plaintiff's Complaint states as follows:

PARTIES

1. This DEFENDANT lacks knowledge or information sufficient to form a belief as to the truth of these allegations, and therefore denies the allegations pled in paragraph 1 of plaintiff's Complaint.

2. This DEFENDANT admits the allegations pled in paragraph 2 of plaintiff's Complaint.

JURISDICTION

3. This DEFENDANT lacks knowledge or information sufficient to form a belief as

1 to the truth of these allegations, and therefore denies the allegations pled in paragraph 3 of
2 plaintiff's Complaint.

3 4. This DEFENDANT admits the allegations pled in paragraph 4 of plaintiff's
4 Complaint.

5 5. This DEFENDANT admits the allegations pled in paragraph 5 of plaintiff's
6 Complaint.

7 6. This DEFENDANT lacks knowledge or information sufficient to form a belief as
8 to the truth of these allegations, and therefore denies the allegations pled in paragraph 6 of
9 plaintiff's Complaint.

10 **VENUE**

11 7. This DEFENDANT admits the allegations pled in paragraph 7 of plaintiff's
12 Complaint.

13 8. This DEFENDANT admits the allegations pled in paragraph 8 of plaintiff's
14 Complaint.

15 9. This DEFENDANT admits the allegations pled in paragraph 9 of plaintiff's
16 Complaint.

17 10. This DEFENDANT lacks knowledge or information sufficient to form a belief as
18 to the truth of these allegations, and therefore denies the allegations pled in paragraph 10 of
19 plaintiff's Complaint.

20 **GENERAL ALLEGATIONS**

21 11. This DEFENDANT admits the allegations pled in paragraph 11 of plaintiff's
22 Complaint.

23 12. This DEFENDANT admits the allegations pled in paragraph 12 of plaintiff's
24 Complaint.

25 13. This DEFENDANT denies the allegations pled at paragraph 13, lines 8-9 and
26 admits the remaining allegations pled in paragraph 13 of plaintiff's Complaint.

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1 14. This DEFENDANT admits the allegations pled in paragraph 14, lines 16-24 of
2 plaintiff's Complaint and denies the allegations at lines 24-27. This DEFENDANT admits to the
3 allegations at page 4, line 27 to page 5, line 9. This DEFENDANT denies the allegations pled at
4 page 5, lines 9 to 20 and admits the remaining statements in the paragraph.

5 15. This DEFENDANT admits that it recorded a Notice of Completion on or about
6 December 7, 2007 and that the PORT and TRAYLOR executed a release document on or about
7 April 22, 2007 and denies or lacks knowledge or information sufficient to form a belief about the
8 truth of the rest of the paragraph.

9 16. This DEFENDANT denies the allegations pled in paragraph 16 of plaintiff's
10 Complaint.

11 17. This DEFENDANT denies the allegations pled in paragraph 17 of plaintiff's
12 Complaint.

13 **FIRST CLAIM FOR RELIEF**

14 (Breach of Contract)

15 18. This DEFENDANT incorporates all matters answered in all preceding paragraphs
16 of this Complaint as though such answers are set forth herein.

17 19. This DEFENDANT denies the allegations pled in paragraph 19 of plaintiff's
18 Complaint.

19 20. This DEFENDANT denies the allegations pled in paragraph 20 of plaintiff's
20 Complaint.

21 21. This DEFENDANT denies the allegations pled in paragraph 21 of plaintiff's
22 Complaint.

23 **SECOND CLAIM FOR RELIEF**

24 (Negligence, Breach of Implied Warranty of Contract Documents, and/or
25 Misrepresentation/Omission of Material Facts)

26 22. The PORT incorporates all matters answered in all preceding paragraphs of this
27 Complaint as though such answers are set forth herein.

1 34. This DEFENDANT denies or lacks sufficient information to admit the allegations
2 pled in paragraph 34 of plaintiff's Complaint.

3 **FOURTH CLAIM FOR RELIEF**

4 (Declaratory Relief Regarding Entitlement to Extra Time and Invalidity/Reimbursement of
5 Liquidated Damages Withheld)

6 35. This DEFENDANT incorporates all matters answered in all preceding paragraphs
7 of this Complaint as though such answers are set forth herein.

8 36. This DEFENDANT denies the allegations pled in paragraph 36 of plaintiff's
9 Complaint.

10 37. This DEFENDANT admits TRAYLOR's contentions are reflected in lines 22 to
11 24 but denies the basis for those contentions. This DEFENDANT admits the remaining portion
12 of the allegations pled in paragraph 37.

13 38. This DEFENDANT admits that TRAYLOR seeks such determination but denies
14 the remaining allegations pled in paragraph 38 of plaintiff's Complaint.

15 39. This DEFENDANT denies the allegations pled in paragraph 39 of plaintiff's
16 Complaint.

17 **AFFIRMATIVE DEFENSES**

18 **FIRST AFFIRMATIVE DEFENSE**

19 As a first affirmative defense, defendant asserts that plaintiff has waived any and all
20 claims that it may have or have had against defendant.

21 **SECOND AFFIRMATIVE DEFENSE**

22 As a second affirmative defense, defendant asserts that the obligation set forth in the
23 complaint was fully discharged by defendant's payment of the sums paid, which was the full
24 amount due and was accepted by plaintiff.

25 **THIRD AFFIRMATIVE DEFENSE**

26 As a third affirmative defense, defendant asserts that the obligation set forth in the
27 Complaint was fully and/or partially discharged by an accord and satisfaction.
28

FOURTH AFFIRMATIVE DEFENSE

As a fourth affirmative defense, defendant asserts that plaintiff's unreasonable delay and conduct with respect to its performance of the contract bars plaintiff from recovery under the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

As a fifth affirmative defense, defendant asserts that plaintiff's unreasonable delay and conduct with respect to its performance of the contract bars plaintiff from recovery under the equitable doctrine of estoppel.

SIXTH AFFIRMATIVE DEFENSE

As a sixth affirmative defense, defendant asserts that plaintiff has fully and/or partially released any and all claims that it may have or had against defendant.

SEVENTH AFFIRMATIVE DEFENSE

As a seventh affirmative defense, defendant asserts that plaintiff's Complaint, and each cause of action contained therein, is barred because plaintiff failed to present claims in compliance with the Government Claims Act, found in Government Code section 910, et seq. and related statutes. Any basis for plaintiff's recovery as set forth in the Complaint that was not subject to timely claim is barred.

EIGHTH AFFIRMATIVE DEFENSE

As an eighth affirmative defense, defendant asserts that plaintiff has failed to bring this action in a timely manner and has otherwise failed to maintain this action and each cause of action therein, within the Statute of Limitations, including, but not limited to California Code of Civil Procedure sections 337, 337.1, 337.15, 338, 339, and 340(3).

NINTH AFFIRMATIVE DEFENSE

As a ninth affirmative defense, defendant asserts that plaintiff's action is barred in part or

1 in full by plaintiff's failure to exhaust necessary administrative, judicial and/or internal
2 contractual remedies, including the remedy of mandamus, before filing this action. This defense
3 includes, but is not limited to plaintiff filing and serving the Complaint prior to invoking and/or
4 exhausting the dispute and claim resolution requirements of the subject contract.

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6 **TENTH AFFIRMATIVE DEFENSE**

7 As a tenth affirmative defense, defendant asserts that awarding damages to plaintiff would
8 be contrary to public policy because of plaintiff's own misconduct and unclean hands and further
9 because plaintiff's claims violate provisions of the California Public Contract Code, including
10 competitive bidding statutes.

11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 As an eleventh affirmative defense, defendant asserts that if any damages were sustained
13 by plaintiff, which defendant denies, the damages were proximately caused by the acts and/or
14 omissions of third parties over who defendant exercises no control and for whose acts defendant
15 is not responsible.

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17 **TWELFTH AFFIRMATIVE DEFENSE**

18 As a twelfth affirmative defense, defendant asserts that plaintiff has failed to allege special
19 and/or consequential damages with sufficient specificity in which to state a claim for such
20 damages.

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22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23 As a thirteenth affirmative defense, defendant asserts that plaintiff has failed to mitigate
24 its damages.

25 **FOURTEENTH AFFIRMATIVE DEFENSE**

26 As a fourteenth affirmative defense, defendant asserts that plaintiff's Complaint is barred,
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1 or any recovery should be reduced, because of plaintiff's own neglect and fault in connection
2 with the matters alleged.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 As a fifteenth affirmative defense, defendant asserts that plaintiff's causes of action are
5 barred under the doctrine of consent.
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7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 As a sixteenth affirmative defense, defendant asserts that at all times relevant herein,
9 plaintiff knew of the risk of the contract activities, including, but not limited to the physical
10 conditions ordinarily encountered and generally recognized as inherent in the work provided for
11 the contract, and that plaintiff voluntarily and without duress assumed those risks such that
12 plaintiff's assumption of the risk was the sole proximate cause of plaintiff's damages, if any.
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14 **SEVENTEENTH AFFIRMATIVE DEFENSE**

15 As an seventeenth affirmative defense, defendant asserts that the damages suffered by
16 plaintiff, if any, were the actual proximate result of the negligence or other misconduct of parties,
17 persons, corporations, or entities other than his defendant, and that this answering defendant's
18 liability, if any, is limited in direct proportion to that percentage of fault actively attributable to
19 this defendant.
20

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 As an eighteenth affirmative defense, defendant asserts that the damages claimed by
23 plaintiff, if any, are speculative, not reasonably susceptible to proof and do not form a reasonable
24 basis for computing loss.

25 **NINETEENTH AFFIRMATIVE DEFENSE**

26 As a nineteenth affirmative defense, defendant asserts that any damages alleged by plaintiff
27 are subject to a set-off, either partially or in the full amount of the alleged damages.
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1 **WHEREFORE**, as to all claims for relief plead by plaintiff, defendant prays as follows:

- 2 1. That plaintiff take nothing by reason of its complaint, that judgment be rendered in
3 favor of defendant;
4 2. That defendant be awarded its costs of suit incurred in defense of this action; and
5 3. For such other relief as the Court deems proper.
6

7 **DEMAND FOR JURY TRIAL**

8 SAN DIEGO UNIFIED PORT DISTRICT demands a trial by jury on all claims for relief
9 for which a right to trial by jury exists.

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11 DATED: December 18, 2008

Koeller, Nebeker, Carlson & Haluck, LLP

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13 s/Tracy L. Hughes, Esq.

Gary L. Hoffman, Esq.

Tracy L. Hughes, Esq.

Gary.Hoffman@knchlaw.com

Tracy.Hughes@knchlaw.com

Tracy L. Hughes, Esq.

Attorneys for Defendant,

SAN DIEGO UNIFIED PORT DISTRICT
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